

EXHIBIT 22

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WASHINGTON

3 CITY OF SPOKANE, a)
4 municipal corporation)
5 located in the County of)
6 Spokane, State of)
7 Washington,)

Case No.
2:15-cv-00201-SMJ

8 Plaintiff,)

9 -vs-)

10 MONSANTO COMPANY, et al.,)

11 Defendants.)

12 SHOOK HARDY & BACON L.L.P.
13 2001 MARKET STREET - SUITE 3000
14 PHILADELPHIA, PENNSYLVANIA 19103
15 JANUARY 17, 2020
16 9:11 A.M.

17 ORAL DEPOSITION OF
18 JOHN P. WOODYARD

19 REPORTED BY:

20 DEBRA SAPIO LYONS, RDR, CRR, CRC, CCR, CLR, CPE

21 JOB NO. 174202

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sure that you and I are on the same page -- that you have participated in multiple PCB projects for industry and government.

What did you mean by "industry"?

A. Private corporations.

Q. Anything else?

A. I don't think so. I think that's what I was thinking when I wrote that.

Q. Okay. We covered this a little bit before, but I want to ask you some -- a few more specific questions on the scope of what you're planning on testifying to with regard to the EPA. Okay?

A. Okay.

Q. I'm wondering, are you planning on rendering opinions on EPA's intent with regard to various regulations?

A. Possibly, particularly in the context of preambles and guidance documents surrounding the regulations that are intended to help people understand their intent.

Q. Would the testimony that you're providing or may provide with regard to the intent of the EPA, would it be a matter of

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reading the various documents that undergird that regulation, such as preambles and things of that nature, documents that EPA has created?

A. No, it would -- it would go beyond that. I've worked directly with EPA for most of the last 40 years in some capacity and -- and have had communications, conversations with them that have -- that have colored my view on -- on a lot of these issues.

Q. So your intent is to -- the scope of your description of EPA intent goes to discussions with third parties at the EPA or related to the EPA; correct?

A. Including, but not limited to that, that group that you just described, yes.

Q. And your intention is to give opinions on EPA's intent not only from the documents that the EPA has promulgated itself, or the regulations, but also through your discussions with various EPA officials and people knowledgeable about EPA?

A. Including those, but not limited to those.

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2 Q. Fair enough.

3 A. It could include a broad range
4 of contact I've had with the agency and with
5 people who've interacted with the agency.

6 Q. Is there any other basis for --
7 you describe -- you've given me the various
8 other EPA documents, such as preamble and the
9 written word of the EPA, and then you've
10 indicated through your experience with
11 communications and conversations with EPA
12 officials and other people.

13 Are there any other bases for your
14 rendering an opinion on the intent of the EPA?

15 A. I -- I think pretty broadly that
16 covers it, but there are a broad range of
17 communications I might have had with EPA or
18 people that interacted with EPA during that
19 time.

20 Q. And what particular expertise do
21 you have that would allow you to provide an
22 opinion on the intent of a regulatory body?

23 A. Well, I think you mischaracterized
24 my testimony. The -- it's not -- it's not my
25 in -- I forget the word you used.

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2 Q. Expertise.

3 A. -- expertise in understanding
4 their intent. It's my experience in
5 interacting with them and communicating with
6 them on their intent in a variety of specific
7 situations.

8 Q. Communications with these third
9 parties?

10 A. With EPA and -- and clients and
11 others who've interacted with EPA as well.

12 Q. Those would be with third parties
13 that are not before us today?

14 A. That would be correct. That would
15 include such as trade associations, individual
16 clients who were involved in EPA discussions,
17 permits, things of that nature.

18 Q. Have you -- you've never worked
19 for the EPA, I assume?

20 A. As an employee? No.

21 Q. Yes, sir.

22 You mentioned a couple of
23 documents. One was the preamble, but you said
24 a couple of other things and I forget what it
25 was. My question is: Are there any

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particular documents that you have reviewed that you're relying upon in giving opinions on the EPA's intent?

A. I think -- I think I referred generally to preambles and guidance documents.

Q. What do you mean by that, sir?

A. Mean by what?

Q. Guidance documents.

A. What I mean by that is documents EPA has published, including memoranda, but also booklets, question-and-answer documents, things of that nature that are specifically intended to inform the regulated community on what they meant by certain rules and certain -- certain technical requirements in the regulations.

Q. And those would be documents that are published or put out by the EPA?

A. Yes, those are publicly available.

Q. Are you relying upon any other documents from other sources other than the EPA in rendering opinions on the EPA's intent?

A. That's hard to say because going back to my earlier testimony, part of -- part

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of my experience in -- in understanding EPA's intent has to do with communications I may have had with EPA, which might have been dialogues with EPA, it may have been reviewing permits and other communications related to client issues. So a lot of it's conversational and it might not be a document I'm relying on or even a document that I would recall.

Q. And I understand that. I -- you've -- I think I understand that you've indicated that for your purpose in determining EPA's intent, you're going to rely upon various -- various conversations with the EPA and its various people over the years. I understand that.

My question goes specifically to documents that those -- that may exist that you're relying upon to render an opinion about EPA's intent.

A. In -- you're referring to this case?

Q. Yes, sir.

A. I can't recall any offhand.

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2 Mr. Goutman know so that he can supplement
3 your testimony for me, please, sir?

4 A. Yes.

5 MR. MCDOUGAL: Pass the witness.

6 Thank you.

7 MR. GOUTMAN: Sure.

8 EXAMINATION

9 BY MR. GOUTMAN:

10 Q. I have a few follow-up questions.

11 You mentioned in your discussions
12 with Mr. McDougal about EPA regulations, that
13 you would characterize them as highly
14 technical. What did you mean by that?

15 A. I meant that the regulations for
16 the most part are instructions or --
17 or other -- other communications that are
18 really focused on -- focused for engineers and
19 geologists to -- to apply.

20 Q. And in your view, would somebody,
21 an engineer such as yourself who has 40 years
22 of experience in dealing with these
23 regulations, be of assistance to the judge and
24 jury in interpreting what those regulations
25 mean?

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A. I, yes, I believe so. That's why

I put that information in to my report and

other reports. It's -- unless you have a

technical background, it would be difficult

for you to understand how the regulations are

applied.

Q. Have there been Court cases where

you have testified in front of judge and jury

on this very subject matter, that is the

meaning and interpretation of these highly

technical environmental regulations?

A. Yes, there have been several

actually.

Q. Okay. And in those cases, the

Court permitted you to testify about that

subject matter; correct?

A. Yes, that's correct.

Q. And those cases were, what,

PennDOT?

A. The PennDOT case we discussed

earlier, as well as, I believe it's two

different cases in -- in Alabama related to

the Anniston Plant.

Q. In informing your views as to the

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interpretation of those environmental regulations, you have mentioned in addition to your 40 years of experience, conversations you've had with EPA personnel.

Did you also take into account the actions taken by the EPA with respect to different situations and the regulations that apply to those situations?

A. I have indeed. Actually, the -- when I talked about conversations, most of those have been specific to projects, specific to sites; and -- and any conversation, or at least the essence of any conversation I would have had would have been memorialized in the permit documents associated ultimately with -- with that particular project, and there have been dozens of those.

Q. Now, I'm aware that OSHA, for example, when they investigate a workplace situation will issue a formal document that might contain interpretations of OSHA regulations.

Are you aware of that procedure?

A. Right, they issue -- I think

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2 they're called letters of interpretation or
3 something like that.

4 Q. Does --

5 A. Typically on a letterhead.

6 Q. Does the EPA do that?

7 A. No. In fact, the -- OSHA has had
8 for -- forever, for at least one or two
9 decades now, a policy of posting every letter
10 of interpretation on their website so other
11 people can find it and apply it to their --
12 their own situations.

13 EPA has a history of being opaque
14 about that. They certainly aren't openly
15 transparent. They never post permits or
16 anything on their website, so it's -- it's
17 almost impossible for somebody to know what
18 EPA has approved in the past for other people
19 unless you've got people like me who are the
20 folks on the ground who get involved in those
21 things and can communicate precedents and
22 conditions to other clients.

23 Q. Does the permitting process or the
24 conclusion of the permitting process in the
25 end reflect the EPA's interpretation of the

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2 regulations?

3 MR. MCDUGAL: Objection, form.

4 THE WITNESS: It in --

5 BY MR. GOUTMAN:

6 Q. What does the permitting process
7 represent with respect to EPA regulations?

8 A. Well, fundamentally the permitting
9 or approval process for anything under the PCB
10 regulations deals with situations that aren't
11 self-implementing. In other words, they
12 aren't -- they aren't things you can just do
13 by reading the regulations. They require EPA
14 approval of something, and that something
15 often deviates from what the regulations
16 suggest, and so there has to be discussion of
17 -- of how EPA came to the conclusion that
18 there's no unreasonable risk, and all the
19 background that went into it, including all
20 the documents that might have been submitted
21 associated with that, that request.

22 Q. So without knowledge of these
23 permitting outcomes, if you will, one wouldn't
24 have knowledge as to how the EPA interprets
25 its own regulations?

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A. That -- well, that's been my experience and that's -- that's part of the value I bring to clients when they're encountering a new or somewhat complex situation.

Q. Just some other miscellaneous questions.

You were asked about PCB biodegradation. Do you know whether, in fact, in the peer-reviewed literature biodegradation rates or ranges are published for PCBs?

A. I've reviewed a lot of that material over the years, and -- and there's clearly a lot of research, a lot of focus on that. It's slow, but there's no question that PCBs degrade in the environment over time.

Q. And do different types of PCBs biodegrade at different rates?

A. They do.

Q. Now, you were questioned about the Monsanto -- Monsanto's decision to leave the incineration business.

Do you know whether, in fact, when that decision was made, whether there were

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I'm wrong just because you included "intent" in the second iteration of that question, he said that he was going to rely upon it in terms of how the regulations are interpreted.

Is that fair?

THE WITNESS: Yes.

BY MR. MCDUGAL:

Q. Is that -- that is fair then; correct?

A. Yes.

Q. So your intention is to rely upon EPA permitting outcomes to testify about how EPA regulations are to be interpreted?

A. Yes.

Q. And which of those EPA permitting outcomes will you rely upon in rendering that testimony?

A. Well, the whole -- the whole of my experience in all those different permits, for example.

We -- the context I was responding to in making that statement was that you were suggesting earlier that -- that conversations

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were somehow just conversations, when, in fact, they were steps toward getting to a written permit which memorialized those conversations and that those permits are not publicly available, the process is not generally documented, just the outcome. And that's -- that's part and parcel to the experience that I have that's valuable to clients.

Q. And I'm wondering if you have today any specific EPA permitting outcomes that form the basis of that testimony.

A. And my answer, again, is all of them.

Q. And what document would reflect what you mean by "all of them"?

What would encompass an identification of those outcomes?

Is there a document we could look at that would reflect those EPA outcomes that you're relying on?

MR. GOUTMAN: Objection, overly broad. If I might, it might be helpful --

MR. MCDOUGAL: Sure.

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MR. GOUTMAN: -- to maybe go to his

report and say, "With respect to this

interpretation of this regulation, what

permitting outcome?" 'Cause just it's very

overly broad and that's why he's giving you

all of them.

BY MR. MCDOUGAL:

Q. Let me ask you this.

In reviewing your report, are

there particular places in your report that

identify specific EPA outcomes that you're

going to rely upon in testifying to EPA's

interpretation?

A. As it relates to something in

Spokane?

Q. Yes, sir.

A. I don't believe I did that by --

again, what I'm responding to is -- is -- is

ensuring that -- that that experience broadly

defined with all those different permits,

either permits I've obtained or others have

that I've reviewed, how that flavors my -- my

skill set, if you will, in helping clients

with compliance issues, cleanup issues, and

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2 the like.

3 Q. Over your roughly 40 years of

4 experience?

5 A. Correct.

6 Q. It's my understanding then that

7 there are not specific EPA outcomes that you

8 can identify that you would direct

9 specifically in the City of Spokane case that

10 would reflect EPA's interpretation?

11 A. That -- that I can't say offhand.

12 Q. Okay.

13 A. All I'm trying to do is enhance or

14 at least illustrate the depth of my experience

15 in dealing with this and my credibility as

16 somebody who -- who can describe what the

17 regulations mean.

18 MR. MCDOUGAL: Objection,

19 unresponsive.

20 BY MR. MCDOUGAL:

21 Q. Talking about the incinerators,

22 Mr. Goutman asked you about the availability

23 of certain incinerators, and I think that you

24 indicated there were some additional

25 incinerators that were available.

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CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA)

) ss:

COUNTY OF PHILADELPHIA)

I, Debra Sapio Lyons, a Registered Diplomat Reporter, a Certified Realtime Reporter, a Certified Realtime Captioner, an Approved Reporter of the United States District Court for the Eastern District of Pennsylvania, a Certified Court Reporter for the State of New Jersey; and Notary Public within and for the States of New Jersey, New York and the Commonwealth of Pennsylvania do hereby certify:

That John P. Woodyard, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness, to the best of my ability and thereafter reduced to typewriting under my direction.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of the matter.

In witness whereof, I have hereunto set my hand this 21st day of January, 2020.



DEBRA SAPIO LYONS
CRR, RDR, CRC, CCR, CPE